

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CLINTON McCOMAS,

Civ. No. 07-6371-HO

Plaintiff,

ORDER

v.

QWEST CORPORATION,

Defendant.

Defendant filed a motion to dismiss for failure to state a claim the time-barred allegations of the complaint and plaintiff's claim for reckless infliction of emotional distress (RIED). Plaintiff alleges actions taken within and without the applicable limitations periods. The court will not "dismiss" allegations of conduct that predates the limitations period. Whether plaintiff may recover for certain alleged conduct is more appropriately determined at the summary judgment or trial stages of the case, after further development of the facts.

Judges in this district have held that RIED is not a

cognizable claim under Oregon common law. See e.g. Snead v. Metro Prop. and Cas. Inc. Co., 909 F. Supp. 775 (D. Or. 1996); Navarette v. Nike, Inc., 2007 WL 221865 (D. Or). Plaintiff makes an interesting contrary argument, which he undermines by asserting that the intent element of the claim of RIED is encompassed by the intent element for the claim of intentional infliction of emotional distress. If necessary, the court will determine whether plaintiff's RIED claim is cognizable at the summary judgment or trial stages. Defendant may raise the issues presented by its motion to dismiss at such later stages.

Conclusion

Based on the foregoing, defendant's motion to dismiss [#8] is denied.

IT IS SO ORDERED.

DATED this 6th day of June, 2008.

s/ Michael R. Hogan
United States District Judge